

No. 83-1208

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**IN THE
SUPREME COURT
OF THE UNITED STATES**

October Term, 1983

MONTE LEE,

Petitioner,

vs.

CHIEF JUSTICE WARREN E. BURGER
JUSTICE HARRY A. BLACKMUM
JUSTICE WILLIAM J. BRENNAN, JR.
JUSTICE THURGOOD MARSHALL
JUSTICE LEWIS F. POWELL
JUSTICE JOHN PAUL STEVENS
JUSTICE BYRON R. WHITE
JUSTICE WILLIAM H. REHNQUIST
JUSTICE SANDRA DAY O'CONNOR,

Respondents.

SUPPLEMENTAL APPENDIX

MONTE LEE
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Hollywood, CA 90028
(213) 465-6575

Petitioner Pro Per

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ERRATA TO PETITION
FOR A WRIT OF CERTIORARI

Your attention is called to the following Errata in the Petition for a Writ of Certiorari:

ORDER from the District Court for the Central District was erroneously

omitted from the Appendix in the original
brief.

Attached to this Errata is the ORDER.

Respectfully submitted,

MONTE LEE

Petitioner in Pro Per

Filed APR-4 1983
Clk U.S. Dist. Court
Cen. Dist. of Calif.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MONTE LEE,) NO. CV
) 82-5549-
Plaintiff,) TJH(BX)
)
vs.) <u>ORDER</u>
)
CHIEF JUSTICE WARREN E. BURGER) ENTERED
JUSTICE HARRY A. BLACKMUN) APR-5 1983
JUSTICE WILLIAM J. BRENNAN, JR.)
JUSTICE THURGOOD MARSHALL) Clk.U.S.
JUSTICE LEWIS F. POWELL) Dist. Court
JUSTICE JOHN PAUL STEVENS) Cen. Dist.
JUSTICE POTTER STEWART) of Calif.
JUSTICE WILLIAM H. REHNQUIST)
JUSTICE BYRON R. WHITE)
)
Defendants.)
)

This matter came on for hearing before the Court on March 21, 1983 upon the motion by the plaintiff, Monte Lee, to enter default judgment against the defendants and upon the motion of the defendants to set aside the default entered by the Clerk of the Court and to dismiss the action. The plaintiff appeared in propria persona and the defendants were represented by their counsel, Stephen S. Trott, United States Attorney, Frederick M. Brosio, Jr., Assistant United States Attorney, Chief, Civil Division, by Jan L. Luymes, Assistant United States Attorney.

Having duly considered the papers filed by the parties in connection with the said motions and oral argument, the Court finds:

1. The plaintiff is suing the defendants as Justices of the United States Supreme Court.

2. Justices of the Supreme Court are officers of the United States.
3. To properly serve a smummons [sic] and complaint upon officers of the United States, a plaintiff is required to deliver a copy of the same to the officers and to the United States Attorney (or Assistant United States Attorney or clerical employee) for the district in which the action is brought and to send a copy of the same by registered or certified mail to the Attorney General. Rule 4(d)(4), (5), Fed.R.Civ.P.
4. While the plaintiff attempted to serve the defendants as officers of the United States, the plaintiff never served the United States Attorney or the Attorney General.
5. An officer of the United States is required to answer a complaint

within sixty days after service upon the United States Attorney. Rule 12(a), Fed.R.Civ.P.

6. By not serving the United States Attorney, the time in which the defendants must answer, plead or otherwise defend has not expired, and the defendants have not failed to answer, appear or otherwise defend in this action.
7. A default can be entered by the Clerk when a party has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure. R. 55(a), Fed.R.Civ.P.
8. Because the defendants have not failed to answer, appear or otherwise defend in this action, the default should not have been entered by the Clerk.

The defendants have shown good cause to have set aside the entry of default by the Clerk (filed on February 14, 1983).

9. One judicial act performed by the Supreme Court Justices is to rule on petitions for certiorari.
10. In denying the plaintiff's petition for certiorari, the defendants were performing a judicial act and as such, are absolutely immune from suit.

Stump v. Sparkman, 435 U.S. 349 (1978); Moore v. Burger, 655 F.2d 1265 (D.C. Cir. 1981); Dennis v. Sparks, 449 U.S. 24 (1980); Butz v. Economou, 434 U.S. 799 (1978); Imbler v. Pachtman, 424 U.S. 409 (1976); Yaselli v. Goff, 275 U.S. 503 (1927), aff'g mem. 12 F.2d 396 (1926); Bradley v. Fisher, 13 Wall.

(80 U.S.) 335 (1872).

11. Judicial immunity applies even if a judge is accused of acting maliciously and corruptly. Pierson v. Ray, 386 U.S. 547 (1967). Allegations of conspiracy also do not defeat the defense of immunity. Agnew v. Moody, 330 F.2d 886 (9th Cir. 1964), cert. denied, 379 U.S. 867; O'Bryan v. Chandler, 352 F.2d 987 (10th Cir. 1965), cert. denied, 384 U.S. 926, rehrg. denied, 385 U.S.. 889.
12. When a defendant is absolutely immune from suit, dismissal of the action as to him is proper. Kaufman v. Moss, 420 F.2d 1270 (3rd Cir. 1970); Ward v. Hudnell, 366 F.2d 247 (5th Cir. 1966).
13. A district court may dismiss a case if satisfied that the action is frivolous. 28 U.S.C. § 1915(d).

14. The plaintiff's claims are frivolous.
15. The plaintiff has not established his claims or any right to relief.
16. No judgment by default can be entered against an officer of the United States unless the claimant establishes his claim or right to relief by evidence satisfactory to the Court. Rule 55(e), Fed.R.Civ.P.

THEREFORE, IT IS ORDERED:

- (1). That plaintiff's motion for entry of default judgment be, and it is hereby denied;
- (2). That defendants' motion to set aside the entry of default by the Clerk is granted and that the Default By Clerk against the defendants filed on February 14, 1983, be, and it is hereby set aside pursuant to Rule 55(c), Fed.R.

Civ.P.;

- (3). That defendant's motion to dismiss the action is granted pursuant to Rule 12(b)(6), Fed.R.Civ.P., and that the plaintiff's action be, and it is hereby dismissed with prejudice.

DATED: This 4th day of April, 1983.

TERRY J. HATTER, JR.
UNITED STATES DISTRICT JUDGE

PRESENTED BY:

STEPHEN S. TROTT
United States Attorney
FREDERICK, M. BROSIO, JR.
Assistant United States Attorney
Chief, Civil Division

/s/ JAN L. LUYMES

JAN L. LUYMES
Assistant United States Attorney

Attorneys for Defendants